

From: Dean - Rockin' R Winemaker [mailto:dean.ro [Redacted]]
Sent: Thursday, November 19, 2015 4:20 PM
To: ATR-LT3-ASCAP-BMI-Decree-Review
Subject: Comments Regarding Music Licensing for Wineries

Justice Department Officials,

I am VERY concerned that "PRO" officials are attempting to obtain even more leeway under their Consent Decree to charge even more extortionate rates to small businesses.

My case is an excellent example:

ASCAP has demanded (and I pay them annually in fear of adverse legal consequences) \$1,000 or more as their purported "minimum" fee. This is a VERY arbitrary "minimum" given that my licensing fees under their standard rate schedule should only be about \$75 per year.

For your information, I operate a tiny 100 square foot wine tasting room adjacent to my tiny (660 SF) winery. We are only open 3 days per week, 6 hours per day, typically seeing less than 30 customers per week, at an average of 30 - 45 minutes per customer at our facility! We do 2 private wine club events each year using a local band or DJ, and have no public events (i.e. weddings, concerts, etc.). We have NO music speakers in our tasting room... music from our barrel storage area filters into the tasting room at barely audible levels.

Regardless, those 800-pound gorillas threatened us with legal action if we failed to pay their extortionate rates (which amount to \$1 per case of wine produced, about 3% of our entire annual production costs for ASCAP alone!!!!).

When challenged to provide WHERE in the Consent Decree there are given the right to set any arbitrary minimum (why not \$\$5,000, or 10,000?) they said only that I could take it up on appeal (in a far distant city and only AFTER pre-paying the fees). Obviously, like all extortion artists, their demands are set at a price where it is cheaper to pay extortion money than it is to fight them, especially for small businesses.

Please be clear: We support PRO and their role in making sure artists are fairly compensated. I, in fact, am also an ASCAP artist. We offered and tendered payment under their published licensing rates formula, only to be told that was not acceptable, we had to pay their UNFAIR and ARBITRARY minimum. At \$1,000 per year in license fees, for 972 total hours of public operation totaling perhaps 500 - 600 total customer-tasting hours, ASCAP is getting \$1.60 (or more) per customer-visit in licensing fees from us when their published licensing rates (i.e. for nightclubs, supermarkets, malls, etc. based on square footage,

weekly hours of operation, etc.) SHOULD amount to a tiny fraction of that for us.

On the flip side, those PROs pay royalties to only their largest, most famous members (i.e., larger publishers like Warner, CBS, etc.). I have NEVER received a penny of royalties as an ASCAP artist/publisher, despite having my songs played on radio, in clubs, etc. Under their antiquated (and now technologically obsolete) methods, if you are not part of a very small statistical sample of preferred radio, TV and large venues, you get nothing, ever. If you are going to re-visit and possibly reinterpret the Consent Decree, PLEASE consider reading it in the context of the modern music industry to FORCE those PROs to use existing technology to ACTUALLY log each and every play (including venue, time of day, average number of customers at each hour, etc.) to very precisely collect royalties and properly distribute them to ALL artists whose music is being played. That is technically possible (almost all technologies are already in place via streaming services such as Pandora, radio & TV station automated logs, jukebox data chips, even existing IPOD systems which record the location of the device as well as the time each song is played, etc.), and this will actually be FAIR to all parties!

Thanks for considering taking even strong action AGAINST these "PRO" firms and forcing them to eliminate their arbitrary minimum fees which bear no relationship to actual music consumed and severely impact small businesses.

Dean DiSandro
Owner & Artist

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